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Engineers Health and Welfare Trust Fund

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

GOLIGHTLY & VANNAH, PLLC,
Plaintiff,

Case No. 3:16-cv-00144-MMD-VPC

vs.

**OPPOSITION TO MOTION TO
AMEND COMPLAINT**

HAL HAMLETT, an individual; JESSICA
HAMLETT, an individual; JAIDYN
HAMLETT, a minor; JONATHAN HOLLAND,
a minor; REGIONAL EMERGENCY
MEDICAL SERVICE AUTHORITY;
CHRISTIAN PURGASON, D.O. dba
NORTHERN NEVADA EMERGENCY
PHYSICIANS; TJ ALLEN, LLC; RENOWN
REGIONAL MEDICAL CENTER; RENO
ORTHOPAEDIC CLINIC, LTD., DR.
CHRISTENSEN; RENO RADIOLOGICAL
ASSOCIATES, CHARTERED; ROBERT G.
BERRY, JR., M.D. PROFESSIONAL
CORPORATION dba ORTHOPEDIC
REHABILITATION SPECIALISTS OF NV;
UNIVERSAL SERVICES, INC.; OPERATING
ENGINEERS FUNDS, INC. dba OPERATING
ENGINEERS HEALTH & WELFARE TRUST
FUND; DOE Defendants I through X; ROE
CORPORATION Defendants XI through XX,

Defendant.

_____ /

Defendant Northern Nevada Operating Engineers Health and Welfare Trust Fund, named
in the Complaint in Interpleader as Operating Engineer Funds, Inc. dba Operating Engineers
Health and Welfare Trust Fund, by and through its undersigned counsel, hereby opposes and
submits its memorandum in opposition to Plaintiff's Motion to Amend Complaint (#25).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

Defendants Hal Hamlett, Jessica Hamlett, Jaidyn Hamlett, and Jonathan Holland (“Hamlett Defendants”) suffered injuries in a motor vehicle accident on August 2, 2013. Thereafter, Hamlett Defendants retained Plaintiff Golightly & Vannah, PLLC (“Personal Injury Attorneys”) under a contingent fee agreement to represent their interests. Shortly after their retention, Personal Injury Attorneys learned of the Hamlett Defendants’ medical providers and medical bills. Personal Injury Attorneys knew all about all of Hamlett Defendants’ medical providers and lien holders, including The Rawlings Company, LLC (“Rawlings”) for years.

Despite knowing of Rawlings’ interests before settlement of the personal injury claims and before filing the Complaint in Interpleader on March 25, 2016, Personal Injury Attorneys did not name Rawlings as a defendant in the Interpleader action it filed.

Moreover, Personal Injury Attorneys did not file a motion for leave to amend before June 21, 2016, the last day to amend pleadings set forth in this Court’s Joint Case Management Order (#19). Northern Nevada Operating Engineers Health and Welfare Trust Fund stipulated to allow Personal Injury Attorneys to amend its Complaint in Interpleader because the stipulation was requested before the cut-off date for amending pleadings. Even after receiving that stipulation, Personal Injury Attorneys did not timely seek to amend before June 21, 2016. After June 21, 2016, Northern Nevada Operating Engineers Health and Welfare Trust Fund informed Personal Injury Attorneys they had failed to timely seek an amendment. (Ex. “1.”)

II. ARGUMENT

Rule 15(a) of the Federal Rules of Civil Procedure directs a court to permit a party to amend its pleading “when justice so requires.” However, courts properly exercise their discretion to deny amendment where the substance of the amendment was known at the time the action was filed and there is no excusable reason why the matter was not alleged in the original pleading, or an amendment was not sought before the deadline for amendment passed. *Coonce v. Aetna Life Insurance Co.*, 777 F.Supp. 759, 773 (W.D. Mo. 1991). “Thus, for example, leave to amend has been denied when the moving party knew about the facts on which the proposed

1 amendment was based but omitted the necessary allegations from the original pleading.” Wright
 2 & Miller, *Federal Practice and Procedure*, §1488 at 809.

3 Personal Injury Attorneys do not provide any excusable reason why they did not include
 4 Rawlings as a party to the Complaint in Interpleader at the time it was filed, or within the time to
 5 amend pleadings as ordered by the Court. Consequently, the Court may, in its discretion, deny
 6 Personal Injury Attorneys’ Motion to Amend Complaint.

7 **III. CONCLUSION**

8 Northern Nevada Operating Engineers Health and Welfare Trust Fund respectfully
 9 submits the Motion to Amend Complaint be denied.

10 DATED this 15th day of July, 2016.

JENKINS LAW FIRM
 Attorneys for Defendant Northern Nevada Operating
 Engineers Health and Welfare Trust Fund

By: 

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CERTIFICATE OF SERVICE

I certify that I am an employee of JENKINS LAW FIRM and that on this date the within document entitled **OPPOSITION TO MOTION TO AMEND COMPLAINT** was electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically e-serve the same on the attorney of record set forth below:

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and that on this date I deposited for mailing at Reno, Nevada a true copy of the within document addressed to:

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DATED this 15 day of July, 2016.



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